(2)
Supreme Court, U.S.
FILED
FEB 8 - 2000
CLERK

No. 99-1153

IN THE
Supreme Court of the United States

I. PARKER HUFF,

Petitioner,

v.

NORTHWEST SAVINGS BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

TRACEY G. BENSON
Counsel of Record
ELIZABETH A. DUPUIS
MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
Attorneys for Respondent
124 North Allegheny Street
Bellefonte, Pennsylvania 16823
(814) 355-5474

157742
Counsel Press LLC
(800) 274-3321 • (800) 359-6859

8pp

QUESTION PRESENTED

None of the questions as stated by petitioner are present in this case. The Petition is premised upon dissatisfaction with determinations of fact and law that were finally decided in prior litigation. Because the petitioner is attempting to re-litigate issues under the guise of a Motion for Contempt in the bankruptcy court, the question presented might more accurately and simply be stated:

1. Where the petitioner sought to re-litigate mortgage foreclosure and execution issues that were finally decided by the Pennsylvania courts in prior actions, did the bankruptcy court properly exercise its discretion in denying the frivolous Motion for Contempt?

STATEMENT PURSUANT TO RULE 29.6

In 1996, all of the outstanding stock in the respondent, The First National Bank of Centre Hall was acquired by Northwest Savings Bank. Northwest Savings Bank has two parent companies, Northwest Bancorp M.H.C. and Northwest Bancorp Inc. Only Northwest Bancorp M.H.C. owns 10% or more of the stock of the respondent.

The instant matter reflects petitioner's desire to re-visit mortgage foreclosure and execution issues previously litigated to finality in the courts of Pennsylvania. This Court subsequently denied review of those proceedings in *Huff v. First National Bank of Centre Hall*, 676 A.2d 289 Pa. Super. (1995), *allocatur denied*, 681 A.2d 178 (Pa. 1996), *cert denied*, 520 U.S. 1210 (1997).

None of the considerations governing review on certiorari set forth in Supreme Court Rule 10 are present in this case. The decision below does not conflict with the decision of another court of appeals on the same matter, nor does it conflict with applicable decisions of this Court. The lower courts in this matter did not consider or decide any important question of federal law.

STATUTES INVOLVED

Petitioner incorrectly represents that the lower courts reviewed issues pertaining to the United States Constitution. No such issues were presented or addressed in the courts below. The statutory provisions contained in 11 U.S.C. § 524(a) and 11 U.S.C. § 105(a) were not considered by the bankruptcy court below. To the extent that the foregoing statutes were relevant to the prior litigation involving the mortgage foreclosure and execution proceedings, all issues properly raised were decided to finality in a manner adverse to the petitioner.

Although Bankruptcy Rule 9020(b) would be applicable to bankruptcy court contempt proceedings, this rule has no relevance to the real issues that petitioner seeks to raise before this Court.

STATEMENT OF THE CASE

A. Prior Litigation

In 1989, the respondent commenced foreclosure proceedings against petitioner in the Court of Common Pleas of Centre County, Pennsylvania. Following entry of a default

judgment, petitioner filed a Chapter 11 bankruptcy petition. The bankruptcy court issued an order in June, 1993, lifting the automatic stay. An execution sale was held on May 24, 1994.

Petitioner's attempts to set aside the sale were unsuccessful. The Superior Court of Pennsylvania affirmed the rulings of the trial court. *Huff v. First National Bank of Centre Hall*, 676 A.2d 289 (Pa. Super. 1995). A Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was subsequently denied, as was a Petition for Writ of Certiorari to this Honorable Court. *Huff v. First National Bank of Centre Hall*, 681 A.2d 178 (Pa. 1996), *cert denied*, 520 U.S. 1210 (1997). The mortgage foreclosure and execution sale issues were thus litigated to finality.

The petitioner subsequently filed a new complaint in the state trial court alleging that the respondent had usuriously imposed interest in the prior mortgage foreclosure judgment. The respondent filed preliminary objections to the complaint contending that the petitioner had previously litigated those issues. The trial court sustained the preliminary objections and dismissed the action with prejudice. Petitioner subsequently appealed that decision to the Superior Court of Pennsylvania, which affirmed. *Huff v. Northwest Savings Bank*, No. 594 HBG 1998 (Pa. Super. Mar. 30, 1999), *allocatur denied,* No. 174 M.D. Misc. Dkt. 1999 (Pa. Oct. 27, 1999).

B. Present Litigation

On June 12, 1998, Petitioner filed a motion under Bankruptcy Rule 9020 seeking contempt and sanctions against the respondent for allegedly violating the bankruptcy stay invoked at the time of his original Chapter 11 filing in 1990. The respondent filed an Answer and a supporting Memorandum in Opposition to the Motion for Contempt. The bankruptcy court held a telephone conference on the matter and provided petitioner the opportunity to submit a letter brief in support of

his motion. Petitioner filed his brief with the court on or about August 20, 1998.

The bankruptcy court entered an Order dated September 10, 1998, dismissing petitioner's motion. Petitioner then appealed to the United States District Court of the Middle District of Pennsylvania. The decision of the bankruptcy court was affirmed by an order of the district court, Judge McClure presiding, entered on December 23, 1998. (Appendix to Petition at pp. 5a-6a). The decision of the district court was affirmed by the United States Court of Appeals for the Third Circuit on September 10, 1999. (Appendix to Petition at pp. 7a-11a). Petitioner filed the instant Petition for Writ of Certiorari on January 4, 2000.

REASONS FOR DENYING THE WRIT

Stated simply, the petitioner is not interested in the bankruptcy court's procedural handling of this matter. The instant petition reveals a desire to re-litigate state law issues pertaining to the prior mortgage foreclosure and execution against real estate. These issues were previously litigated to finality in a manner adverse to petitioner. The Petition fails to state any basis for this Court to exercise supervisory review of the bankruptcy court's disposition of a patently frivolous motion for contempt.

I.

THE ISSUES RAISED IN THE PETITION ARE NOT REVIEWABLE UNDER 28 U.S.C. § 1254 BECAUSE THEY WERE NOT PRESENTED TO THE COURT OF APPEALS AND ARE THEREFORE NOT PROPERLY BEFORE THIS COURT.

A grant of certiorari by this Court is precluded when the issues for which review is sought were "not pressed on by the courts below." *United States v. Williams*, 504 U.S. 36, 42 (1992),

citing Springfield v. Kibbe, 480 U.S. 257, 266 (1987) (dissenting opinion). If a petitioner attempts to raise constitutional arguments not previously raised, such issues will not be considered by this Court as they were not adjudicated in the court below. *Beck v. Washington*, 369 U.S. 541, 549-53 (1962). Review of issues not previously raised can be granted only under exceptional circumstances. *Duignan v. United States*, 274 U.S. 195, 200 (1927).

The arguments raised in pages 9 through 16 of the Petition were not properly before the bankruptcy court below. In the instant case, the lower courts did not consider any substantive issues pertaining to the mortgage foreclosure or execution proceedings conducted in the state trial court. Those issues were litigated to finality in the earlier case and are not properly before this Court for review.

II.

THE BANKRUPTCY COURT'S DENIAL OF THE FRIVOLOUS MOTION FOR CONTEMPT RAISES NO ISSUES APPROPRIATE FOR CONSIDERATION BY THIS COURT.

A grant of certiorari is proper where an issue presented is important in the administration of the Bankruptcy Code, or where an issue of first impression is presented to the court. *Reading Company v. Brown*, 391 U.S. 471, 475 (1968). This Court does not ordinarily review the lower court's application of a rule of procedure when the issue "concerns the judgment of the District Judge in relation to a particular set of facts." *Appalachian Power Company v. American Institute of Certified Public Accountants*, 80 S. Ct. 16, 18 (1959).

Bankruptcy Rule 9020(b) merely provides that a hearing precede any determination of contempt occurring outside the presence of a bankruptcy judge. Because petitioner's motion was patently frivolous, no formal evidentiary hearing was

required. The disposition of petitioner's motion for contempt by the bankruptcy court below simply does not give rise to any issue of first impression. Nor do the decisions below support a contention that further review of this matter will assist in the administration of the Bankruptcy Code. The bankruptcy court, acting within its discretion, held a telephone conference, received written and oral arguments from the parties, and then issued an order denying the motion. No novel issue of law is present here.

CONCLUSION

The bankruptcy court correctly disposed of the petitioner's Motion for Contempt after providing the parties with an opportunity to be heard. No novel issues of law are before this Court and further review by this Court is not appropriate. Accordingly, the respondent Northwest Savings Bank, formerly known as The First National Bank of Centre Hall, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

TRACEY G. BENSON
Counsel of Record
ELIZABETH A. DUPUIS
MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
Attorneys for Respondent
124 North Allegheny Street
Bellefonte, Pennsylvania 16823
(814) 355-5474